

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CRIMINAL DOCKET NO.: 3:94CR40**

UNITED STATES OF AMERICA)	
)	
vs.)	
)	ORDER
TONY OSIAS (2),)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on Defendant's Motion for Injunction, filed February 6, 2006. On January 4, 1996, the Court sentenced Defendant to 142 months imprisonment and five (5) years supervised release. On September 4, 2002, Defendant filed a Motion to Modify his sentence, specifically asking the Court to strike the twenty-first condition of supervised release, which required him to reimburse the United States for the cost of his court-appointed counsel. In an Order dated September 24, 2002, the Court denied Defendant's Motion to Modify his sentence. Defendant's supervised release commenced on August 6, 2004 in the Middle District of Florida and will expire on August 5, 2009.

Defendant now seeks an injunction to prohibit his United States Probation Officer from collecting his DNA. On January 30, 2006, Elaine Terenzi, Chief Probation Officer in the United States District Court for the Middle District of Florida, advised Defendant he was scheduled for DNA testing on February 17, 2006. Defendant argues that allowing the Probation Officer to take his DNA is unconstitutional.

The Court disagrees with Defendant. "The probation office responsible for the supervision under Federal law of an individual on probation . . . shall collect a DNA sample from

each such individual who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d) of this section).” 42 U.S.C. § 14135a(a)(3) (2006). One qualifying Federal offense is “any felony.” 42 U.S.C. § 14135a(d)(1). A felony is “any federal, state, or local offense punishable by death or a term of imprisonment exceeding one year, regardless of the actual sentence imposed.” U.S.S.G. § 4A1.2(o). In the instant case, Defendant pled guilty to a charge of conspiracy to possess with intent to distribute a controlled substance, and was sentenced to 142 months imprisonment. Therefore, Defendant was convicted of a qualifying Federal offense - a felony - and the Probation Officer is permitted to collect Defendant’s DNA.

IT IS, THEREFORE, ORDERED that Defendant’s Motion for Injunction is hereby **DENIED. Defendant is ordered to comply with the United States Probation Officer’s mandate that he appear and permit collection of a DNA sample.**

The Clerk is directed to send copies of this Order to the Defendant, the United States Attorney, and the United States Probation Office for the United States District Court for the Middle District of Florida.

Signed: February 14, 2006



Richard L. Voorhees
Chief United States District Judge

